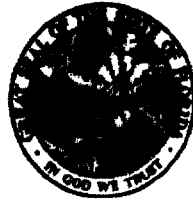


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Public Service Commission

April 18, 1996

APR 19 1996

BY FEDERAL EXPRESS

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554


DOCKET FILE COPY ORIGINAL

Re: Policy and Rules Concerning the Interstate, Interexchange Marketplace;
Implementation of Section 254(g) of the Communications Act of 1934, as
amended -- CC Docket No. 96-61

Dear Mr. Caton:

Enclosed are the original and twelve copies of the Florida Public Service Commission's comments in the above docket. Please date-stamp one copy and return it in the enclosed self-addressed stamped envelope.

Sincerely,


Cynthia B. Miller
Associate General Counsel

CBM/jb
Enclosure

cc: International Transcription Service
Dorothy Conway
Timothy Fain
Brad Ramsay

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APR 19 1996

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In the matter of:)	FCC 96-123
)	
Policy and Rules Concerning the)	CC Docket No. 96-61
Interstate, Interexchange Marketplace)	
)	
Implementation of Section 254(g) of the)	
Communications Act of 1934, as amended)	
)	

COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

EXECUTIVE SUMMARY

The FPSC supports the position that the FCC should eliminate interstate tariff filing requirements at the federal level for non-dominant interexchange carriers; however, we do not support use of the forbearance authority in the Telecommunications Act of 1996 to reach this end result. The current level of interstate competition assures that no one firm has sufficient market power to sustain high rates. The need for carriers to compete for customers, coupled with the complaint process, provides sufficient means for consumer protection. Eliminating interstate tariff requirements at the federal level will reduce costs to carriers and could lead to lower rates. (§19-36)

Defining relevant product markets based on demand substitution factors is theoretically necessary in order to address questions of market power. However, due to the continuum of interstate, interexchange services which are offered, we recommend treating these services as one market for purposes of assessing the market position of any one carrier. (§44-46)

The relevant geographic market is a national market. To address the concern of local exchange companies exerting market power in particular point-to-point markets, the FCC should rely on

the price cap mechanisms currently in place for interstate, interexchange access services and the complaint process. (§49-54)

In the "out-of-region" context, we do not believe that the LEC holds a dominant position in a function which is critical to the provision of interstate, interexchange service. We believe that the separation requirement should not apply to LECs providing "out-of-region" interstate, interexchange services in those cases where the LEC's "in-region" operations are subject to price cap regulation at the interstate and intrastate levels. (§57-62)

We believe that the Telecommunications Act of 1996 provides the States with some flexibility in ensuring that rural customers do not pay higher rates than urban customers. Geographic rate averaging should be based on a LEC's "in-region" serving area to allow rates to parallel differences in access charges. (§68)

It is the FPSC's position that eliminating interstate tariff filing requirements at the federal level for non-dominant interexchange carriers may curtail, what we believe to be, one small means contributing to tacit price coordination by non-dominant carriers. With the entry of the BOCs into the interexchange market, we perceive an increase in competition that should cause further downward pressure on rates. (§81-82)

Since no firm has a sufficiently strong position in the provision of interstate, interexchange services, the FCC's rules should be amended to allow non-dominant interexchange carriers to bundle CPE with interstate, interexchange services. (§84-90)

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In the matter of:)	FCC 96-123
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COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

On March 25, 1996, the Federal Communications Commission (FCC) issued its Notice of Proposed Rulemaking (NPRM) requesting comments on the subject of the appropriate regulatory policies and rules which should govern the provision of interstate, interexchange services. The Florida Public Service Commission (FPSC) is pleased to provide comments on these issues of major importance. We have organized our comments to follow, as closely as possible, the structure and paragraph numbering of the NPRM.

III. REGULATORY FORBEARANCE

A. Introduction

The FPSC supports the position that, at the federal level, the FCC should eliminate interstate tariff filing requirements for non-dominant interexchange carriers; however, we do not support use of the forbearance authority in the Telecommunications Act of 1996 (1996 Act) to reach this end result. Rather, the FCC's broad regulatory powers can be used to accomplish the desired outcome, without triggering forbearance provisions in the Act which might have repercussions at the state level. Since competitive conditions and information needs may vary between the federal and

state levels, tariffing policies should not necessarily be uniform across all regulatory jurisdictions.

Given the above caveats, we do agree that applying interstate tariff filing requirements to non-dominant interexchange carriers is not necessary at the federal level to ensure that such carriers' charges, practices, or classifications are just and reasonable, and are not unjustly or unreasonably discriminatory; that applying interstate tariff filing requirements to non-dominant interexchange carriers is not necessary for the protection of consumers; and that eliminating interstate tariff filing requirements for non-dominant interexchange carriers is consistent with the public interest.

(¶19)

There appears to be no purpose in eliminating interstate tariff requirements for selected carriers only. Currently all carriers are classified as non-dominant. As a result, we believe all should be treated the same.

B. Forbearance from Tariff Filing Requirements for Non-Dominant Interexchange Carriers.

We agree with the FCC's determination that non-dominant carriers at the federal level lack the market power to price their services or impose terms and conditions which are anti-competitive. Price gouging behavior would indeed result in a loss of customers to the carrier. An attempt by firms to price below cost to attract customers is not sustainable in the long run and hence is an unlikely strategy. We believe that market forces and the complaint

process (for both end user complaints and intercompany disputes) are sufficient to deter such behaviors. (§28)

As stated above, the FPSC agrees that requiring non-dominant interexchange carriers to file interstate tariffs for services offered by the companies is not necessary at the federal level for the protection of consumers. In a competitive environment, tariff requirements are a needless consumer protection device. In a monopolistic or oligopolistic environment, tariffs serve a useful purpose for enforcement of necessary rules and regulations by regulatory authorities which govern the practices of the firm(s). However, in a competitive market, competitive forces direct the behavior of firms toward customers and the price setting of goods and services offered. Although the interexchange market is not perfectly competitive as of yet, eliminating interstate tariff filing requirements at the federal level may assist in the progression towards a more competitive market. (§29)

In the matter of eliminating interstate tariffs for non-dominant interexchange carriers, we agree that either mandatory or permissive tariffing may encourage price coordination by competing carriers. However, coordinated pricing would still be possible without tariffs since there are other means to obtain price and service information on competitors (e.g., advertising, trade publications, subscriptions to competitor's offerings). Nonetheless, any measures which can reduce the probability of price coordination should be advantageous to consumers. While firms have

various ways to obtain information on competing carriers' prices and service offerings, the tariffing of rates and charges for services presents one means for price coordination that can be eliminated. (§30)

Interstate tariffs at the federal level impose unnecessary costs on entities which lack market power, and these costs are passed on to the consumer in the form of higher rates and charges. We believe that any costs resulting from unnecessary regulations are not in the public interest. However, we would note that the benefits to maintaining tariffs at the state level, could outweigh the costs. This is due to the high level of interaction between end users and state regulatory authorities. (§31)

The problem of long notice periods inhibiting the ability of carriers to introduce new services and to respond quickly to changes in the market no longer exists. The FPSC, like the FCC, allows a one day notice period for changes to non-dominant interexchange carrier tariffs. We believe that the short notice period allows carriers to respond quickly to changes in the market. (§31)

We agree with the FCC's belief that, at the federal level, a regime without non-dominant interexchange carrier interstate tariffs is the most pro-competitive deregulatory regime. In an effort to promote competition, we believe that natural conditions in the market must prevail if market forces are to flourish. This can only be achieved by the elimination of unnecessary regulations.

We also agree that absent filed tariffs, the legal relationship between carriers and customers will more closely resemble that found in an unregulated environment. Just as with other unregulated products and services, customers will be able to rely on advertising and other means to gather the necessary information to make purchasing decisions. While Florida currently requires intrastate, interexchange service providers to file tariffs, the FPSC will be looking into the use of tariffs and other means for assuring consumer protection at the state level. We believe that due to our high level of interaction with end users, some ready source for intrastate service and price information is needed. Another consideration in determining if tariffs should be retained at the intrastate level is that the level of competition may vary from state to state, and may differ from the national picture. (§34)

We recommend that the FCC require non-dominant interexchange carriers to maintain price and service information and billing records at a designated location for inspection by regulators and consumers. The price and service information and billing records maintained at the designated location should be subject to a minimum retention period. This requirement will better position the service provider in its efforts to respond to inquiries by regulatory authorities and by consumers in a timely manner. (§36)

C. Summary

The FPSC supports the position that, at the federal level, the FCC should eliminate interstate tariff filing requirements for non-dominant interexchange carriers; however, we do not support use of the forbearance authority in the 1996 Act to reach this end result. Rather, the FCC's broad regulatory powers can be used to accomplish the desired outcome, without having any potential repercussions at the state level.

We believe that removing interstate tariff requirements will not result in unjust or unreasonable charges or practices by non-dominant interexchange carriers. The current level of interstate competition means that no one firm has sufficient market power to sustain high rates. With the large number of available providers, firms must be service oriented to maintain the satisfaction of their customers. This need for carriers to compete for customers, coupled with the complaint process, provides sufficient means for consumer protection. Eliminating interstate tariff requirements at the federal level will reduce costs to carriers and could lead to lower rates and charges for consumers if competitive forces are greater than price coordination incentives. Overall, we conclude that eliminating interstate tariff filing requirements for non-dominant interexchange carriers is in the public interest because consumer protection will not be sacrificed and increased competition among carriers should result. (§19-36)

IV. DEFINITION OF RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

A. Relevant Product Market

The FCC has asked for comment on redefining the relevant product market based on demand substitution factors. In theory, there would be a basis for delineating sub-market segments for interstate, interexchange services. One basic subdivision might be business and residential. In turn, the business market could be further separated into the product market for voice services and the product market for video transport services. While this might make for an interesting treatise in theoretical economics, attempting to delineate relevant product markets and then analyzing the sub-markets in order to determine the existence of market power would, in our opinion, not be practical. Such an effort would call for a great expenditure of resources, and the resulting sub-markets might also be too narrow. (§44)

We do not believe that a narrower definition of the product market will aid the FCC in determining whether a carrier or group of carriers together are exerting market power. We do expect interexchange companies to package long distance services to meet the perceived needs of certain market segments. Interexchange companies offer a wide array of services, from T1 services to high-volume discount plans to network monitoring systems. These services may be offered as stand alone products or as part of a package. Defining the relevant product market as an interstate, interexchange service for which there are no close substitutes or a group of services that are close substitutes for each other, but for which there are no other substitutes, is an appropriate

definition. However, due to the continuum of interstate, interexchange services which are offered, there is likely more potential harm than good associated with trying to define groups of substitutable services which constitute sub-markets. In reality, logical sets of substitutable services would likely intersect with one another, rendering such a scheme unworkable in practice. (§46)

B. Relevant Geographic Market

The relevant geographic market for interstate interexchange services is a national market. Customers that purchase long distance service purchase the ability to connect with multiple points throughout the United States. Customers are not restricted because of their location from using long distance services. Debit cards, calling cards, and 800 numbers make accessing long distance possible no matter where you are in the United States. (§49)

We acknowledge the FCC's concern regarding a LEC's potential to exert market power within certain point-to-point markets for "in-region," interexchange service. It appears, however, that the FCC's proposal to examine particular point-to-point markets may be premature at this time. Rather than analyze point-to-point markets to identify the presence of market power, we believe that it would be a better use of resources to allow the price cap mechanism currently in place for interstate, interexchange access services to provide the check on an RBOC or independent LEC's exertion of market power. If the LEC requests to increase access rates above the price cap set by the FCC, this should provide a signal to the

FCC to initiate an investigation into the impact of increased access rates on competitive providers of in-region interstate, interexchange service. Also, if competitors believe that point-to-point markets are relevant geographic markets and that LECs are exerting market power by manipulating access rates, then these competitors will petition the FCC for corrective measures. (§54)

C. Summary

The definition of the relevant product market should be based on demand substitution factors. Defining the relevant product market as an interstate, interexchange service for which there are no close substitutes or a group of services that are close substitutes for each other, but for which there are no other substitutes, is an appropriate definition. However, due to the continuum of interstate, interexchange services which are offered, we recommend treating these services as one market for purposes of assessing the market position of any one carrier.

The relevant geographic market is a national market. To address the concern of local exchange companies' exerting market power in particular point-to-point markets, the FCC should rely on the price cap mechanisms currently in place for interstate, interexchange access services and the complaint process. Conducting analyses of particular point-to-point markets at this time is premature. (§44-54)

**V. SEPARATION REQUIREMENTS FOR INDEPENDENT LOCAL EXCHANGE CARRIER
AND BELL OPERATING PROVISION OF "OUT-OF-REGION" INTERSTATE,
INTEREXCHANGE SERVICES**

A. Introduction

The NPRM broaches the question of whether the existing separation requirements which are a condition for non-dominant treatment of independent LEC provision of interstate, interexchange services outside their local exchange areas should be modified or eliminated. In addition, the FCC has tentatively concluded in the BOC Out-of-Region NPRM that a BOC that provides "out-of-region" interstate, interexchange services through an affiliate that satisfies the separation requirements applicable to independent LECs should be regulated as a non-dominant carrier. (§60) If the separation requirements are modified or eliminated for independent LECs, this raises the question of the appropriateness of imposing separation requirements on the BOCs. (§61) Currently, in order to qualify for non-dominant treatment, the affiliate providing interstate, interexchange services must:

- (1) Maintain separate books of accounts;
- (2) Not jointly own transmission or switching facilities with its affiliated exchange telephone company; and
- (3) Acquire any services from its affiliated exchange telephone company at tariffed rates, terms, and conditions. (§57)

Parties are asked to evaluate whether the existing requirements are burdensome, and whether modification or elimination of these requirements might encourage "cost shifting or other anti-competitive conduct." (§62)

B. Analysis of Issues

We believe that the separation requirements have largely outlived their usefulness. In a rate base/rate of return regulated environment, there was good reason to be concerned about cost shifting. Absent separation requirements, costs could be shifted to the LEC's regulated operations, and captive customers might end up paying higher rates to subsidize the LEC's competitive operations. With the move towards price cap regulation, the incentive to shift costs is quickly disappearing. If the LEC's "in-region" business is subject to price cap regulation at the interstate and intrastate levels, there is little opportunity to profit from cost shifting. One instance where cost shifting might be advantageous is if the LEC wanted to offer a low price initially to lure customers to a new offering, raise price gradually over time, and hope that customers would not notice. The LEC could not offer an artificially low price for any length of time because the firm's profitability would suffer. Given the competitiveness of the interstate, interexchange marketplace, customers are not likely to tolerate the gradual price increases over time. Thus, such a strategy is probably not viable. (§62)

A potential concern with eliminating the separation requirement is that the LEC might possibly hold a dominant position in some function which is critical to the provision of "out-of-region" interstate, interexchange services. "Out-of-region" the LEC has no control over "bottleneck" access facilities which eliminates one traditional concern. One possible area in which the LEC could hold a dominant position "out-of-region" is billing and collection services. On an "in-region" basis, there is a commonly held belief that the LEC's actual or perceived ability to disconnect service for non-payment has given the LEC a competitive advantage in the provision of billing and collection services. "Out-of-region," however, the LEC has no actual or perceived disconnect authority, and hence should not have an advantage in billing and collection services. This point is important, since if the LEC had an advantage in billing and collection for "out-of-region" service, the LEC could give their out-of-region toll operation a very attractive rate for billing and collection services, while competitors might have to pay significantly more (either from the "in-region" or "out-of-region" LEC). The net effect would be to create a competitive advantage for the LEC's "out-of-region" toll operation. (§62)

C. Summary

In the "out-of-region" context, we do not believe that the LEC holds a dominant position in a function which is critical to the provision of interstate, interexchange service. Moreover, there is

little incentive to shift costs under price cap regulation since there is little opportunity to profit from such behavior. Accordingly, we believe that the separation requirement should not apply to LECs providing "out-of-region" interstate, interexchange services in those cases where the LEC's "in-region" operations are subject to price cap regulation at the interstate and intrastate levels. (§57-62)

VI. RATE AVERAGING AND INTEGRATION REQUIREMENTS OF 1996 ACT

A. Geographic Rate Averaging

We do not interpret Section 254(g) of the Act as an absolute and inflexible preemption of state laws and regulations. On the contrary, the legislation, as we interpret it, allows for some state flexibility in ensuring that rural rate payers are not paying interexchange rates that are higher than rates paid by urban customers. Section 261(b) of the Act states that:

Nothing in this part shall be construed to prohibit any State commission from enforcing regulations prior to the date of enactment of the Telecommunications Act of 1996, or from prescribing regulations after such date of enactment, in fulfilling the requirements of this part, if such regulations are not inconsistent with the provisions of this part.

Throughout the Act there is a call for a joint Federal and State partnership in carrying out the Act. States should be

provided the flexibility of executing state policies designed to meet the spirit of the Act.

The objective of Section 254(g) of the Telecommunications Act of 1996 is to ensure that interexchange rates charged to rural customers are not higher than interexchange rates charged to urban customers. For some time, it was the FPSC's policy to require AT&T to maintain statewide average rates in order to avoid lower rates being offered to urban areas and higher rates being offered to rural customers. The FPSC has found it rational to allow a long distance carrier to set rates based on an individual LEC's switched access charges. Interexchange companies incur originating and terminating switched access charges which vary by LEC. These charges are a major cost component for IXCs and are implicitly recovered in IXC toll rates. If LEC X charges lower access charges than LEC Y, an IXC providing interexchange service in LEC X's territory may want to charge lower rates in LEC X's territory based on the lower access rates. The presence of over four hundred IXCs in the state of Florida helps alleviate our concern that rural customers will pay long distance rates that are higher than those charged to their urban neighbors. Geographic rate averaging should be done on a narrower scale. Instead of on a nationwide or statewide scale, geographic rate averaging should be based on the LEC's "in-region" serving area. This way, a long distance company can take advantage of the economies brought about from lower access rates that may be offered in a particular territory. (§64-68)

B. Summary

We believe that the Telecommunications Act of 1996 provides the States with some flexibility in ensuring that rural customers do not pay rates that are higher than those paid by urban customers. We do not view section 254(g) of the Act as an absolute and inflexible preemption of state laws and regulations. Geographic rate averaging should be based on a LEC's "in-region" serving area. This allows an interexchange company to take advantage of the economies brought about from lower access rates that may be offered in a particular territory. (§68)

VII. PRICING ISSUES

A. Tacit Price Coordination

The FPSC agrees it is possible that tacit price coordination exists among service carriers. We believe that tariffs may contribute to price coordination. We concur with the FCC's position that competitive entry by the BOCs and other facility based carriers should make price coordination more difficult. We believe that the competitive entry allowed by the 1996 Act will promote more rivalry among firms, resulting in a reduction in price coordination. (§81)

B. Residential Service Rate Plans

AT&T's commitment to offer optional calling plans intended for low-income and low-volume consumers for three years should eliminate concerns about rate increases for basic long distance rates. The three year time commitment period for these optional

calling plans will allow additional entrants to establish themselves as viable competitors in the interexchange carrier market. There appears to be no commitment by AT&T to cap rates on their most popular optional calling plans. Based on the discussion above regarding tacit price coordination, if AT&T raises its rates on its most popular optional calling plans, other carriers will follow suit. However, if an increase in competition develops with the entrance of the BOCs, we believe that a reduction in rates would most likely occur. (¶82)

C. Summary

It is the FPSC's position that eliminating interstate tariff filing requirements at the federal level for non-dominant interexchange carriers may curtail, what we believe to be, one means contributing to tacit price coordination by non-dominant carriers. With the entry of the BOCs into the interexchange market, we perceive an increase in competition that should cause further downward pressure on rates. (¶81,82)

VIII BUNDLING OF CUSTOMER PREMISES EQUIPMENT

A. Introduction

When competition was initially developing for customer premises equipment (CPE), there were concerns that bundling of CPE with telecommunications services (which were less competitive) might force customers to purchase or lease unwanted telephone sets and equipment as a condition to obtain needed transmission services. These concerns led the FCC to adopt a rule in 1980 which

prevented common carriers from bundling the provision of CPE and common carrier telecommunications services. (§84) At the time of the rule adoption, the FCC noted that bundling may be appropriate if "the markets for components of [a] commodity bundle are workably competitive" and "the customer is not deceived concerning the content and quality of the bundle." (§85) There was recognition that packages can be an effective marketing tool, and that customers may like the convenience of buying a bundled offering, rather than having to make individual purchasing decisions. (§85)

B. Analysis of Issues

Given the competitive progress since 1980 in the long distance and CPE markets, we agree with the FCC's tentative conclusion that "it is unlikely that non-dominant interexchange carriers can engage in the type of anticompetitive conduct that led the Commission to prohibit the bundling of CPE with the provision, inter alia, of interstate, interexchange services." (§88) The past concern that monopoly power in one market could be used to monopolize a second market no longer seems applicable in this situation. At one point in history, AT&T held a dominant position in both CPE and interstate, interexchange services; however, this situation has changed dramatically. The FCC staff report entitled Long Distance Market Shares: Fourth Quarter, 1995 shows that AT&T's share of interstate minutes and revenue has fallen to 56% and 55%, respectively, as of the end of 1995. Both the FCC and the FPSC have recently found that AT&T no longer warrants "dominant" or

"major" carrier status. The anticipated entry of local exchange companies, particularly the BOCs, into interstate, interexchange services should boost competition even further. By permitting bundling of CPE and interstate, interexchange services, there is a significant probability that the customer will benefit from reduced transaction costs and more intensive competition. (§ 88,90)

In addition, AT&T's decision in September 1995 to split into three separate companies (one of the three being a systems and products firm called Lucent Technologies) provides further evidence of the progress of competition. AT&T's decision to separate CPE and long distance suggests that external opportunities outweigh the potential benefits of having exclusive arrangements which package AT&T products/services at some point in the future. In the AT&T Chairman's Message to Employees of February 5, 1996, he stated:

We chose to restructure so that each of the new companies can focus on its customers and markets. Each can make decisions and shift strategy without tripping over another AT&T unit.

Lucent and AT&T will likely combine products, but competitors will be able to purchase Lucent's products as well. AT&T's actions serve to further promote competition in two markets (CPE and long distance) where the competitive transition was already well along. We would also note that AT&T's restructuring plan eliminates any possible concern that its market position in PBXs might be strong

enough to allow tying arrangements with interstate, interexchange services. (§88)

Finally, for maximum customer choice and consistency with the Uruguay Round Agreements of the General Agreement on Tariffs and Trade, we recommend that interexchange carriers also be required to have separate, unbundled offerings where CPE and interstate, interexchange bundling is offered. Such an approach would also take care of any possible issues arising from differential taxation treatment for CPE and interstate, interexchange services. (§89)

C. Summary

We believe that no firm has a sufficiently strong position in the provision of interstate, interexchange services to provide the necessary leverage to deter competition in CPE through bundling. Therefore, the FCC's rules should be amended to allow non-dominant interexchange carriers to bundle CPE with interstate, interexchange services. For maximum customer flexibility and consistency with recent trade agreements, separate, unbundled offerings should also be available where combined CPE and interstate, interexchange packages are sold. (§84-90)

Respectfully submitted,


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DATED: April 18, 1996